

2000 CONFIDENTIALITY & DISCLOSURE

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2010 CONFIDENTIALITY

All information received or developed during the audit is to be treated as confidential information unless it is specifically made public by law. It is the auditor's responsibility to maintain the security of all confidential data during the audit process and to prevent any unauthorized disclosure. The [Disclosure Manual](#) contains the rules pertaining to the security and disclosure of confidential data.

Following are some standards and rules to keep in mind when conducting your audit.

- Do not access, request, acquire, or examine confidential information unless there is a need to do so in the normal course of your audit.
- Do not discuss or disclose confidential information to unauthorized individuals. This includes both written and verbal disclosure.
- Dispose of confidential information using approved destruction methods.
- Protect your user ID and password. You are personally responsible and accountable for all activity occurring under your user ID and password.
- Report any suspected unauthorized use of your user ID or password immediately to your supervisor or data security officer.

You must report all unauthorized disclosures immediately to your supervisor. This includes those observed and overheard, as well as disclosures due to your own actions. Your supervisor needs your account of the disclosure before the taxpayer or department can take action. The supervisor must immediately report the disclosure to the section manager who reports it to the Disclosure Officer within 24 hours.

2020 DISCLOSURE OF INFORMATION

California Revenue and Taxation Code (R&TC) section 19543 is quite specific as to disclosing information about the business activities of corporate taxpayers. For FTB employees, the disclosure of confidential information is limited to authorized individuals that have a "right" and a "need" to know the information to perform their jobs. A right to know means "legal right to know the information." A need to know means that you need the information to perform your job responsibilities. There must be both a right to know and a need to know before authorized disclosure can occur.

Under R&TC section 19543, the following public information is not confidential and may be disclosed to any requestor:

- Corporate title.
- Corporate number.
- Date of commencement of business in this state.
- Taxable year adopted.
- Filing date of return.
- Name, date, and title of individuals signing affidavit to return.
- Due date of taxes.
- Taxes unpaid (tax, penalties and interest) (do not provide a breakdown).
- Entity's address.
- Private address of officers and directors (only if that information is on the tax return or the Secretary of State file).

2030 DISCLOSURE OF CORPORATE TAXPAYERS' FILES

The Department has developed the following guidelines for the disclosure of certain taxpayers' files (Refer to the [Disclosure Manual](#) for additional guidance):

What To Disclose:

Audit File: Taxpayers and their authorized representatives may obtain copies of their audit file. This includes the narrative, progress report, event log, and all workpapers and supporting material. However, they may not obtain any document, or portion of a document, that discloses the auditor's opinion, judgment, analysis of the strengths and weaknesses of the proposed assessment, proprietary information (such as dollar thresholds for audit selection or other audit selection criteria), or information from or about third parties unrelated to the taxpayer. Generally, review notes are not subject to disclosure because they may contain recommendations and analysis of the strengths and weaknesses of a case. This includes review notes of the supervisor and the review staff in the Technical Resource Section.

IRS Information: The IRS/FTB Exchange of Information Agreement prohibits the disclosure of information received from the IRS to anyone other than the taxpayer or its authorized representative. For example, we cannot provide other states with copies of information we received from the IRS, unless we obtain written permission from the IRS.

Affiliated Entity Information: Information from or about an affiliate may be disclosed to the taxpayer or its authorized representative if it is relevant to the determination of the taxpayer's franchise or income tax liability. See R&TC Section 19545. For example, assume Taxpayer A and Taxpayer B are affiliated and filed their California returns on a separate company basis. Audit determines that A and B are unitary. Each taxpayer is entitled to obtain information regarding their affiliates' income and apportionment factor denominators because such information is relevant to the determination of the taxpayer's California franchise or income tax liability.

Protest File: The protest file for cases handled by the Legal Division may not be disclosed. Taxpayers and their authorized representatives may, however, obtain copies of the protest file if the case was handled by the audit staff. In general, the information that must be disclosed includes all workpapers and supporting material. We are not required to provide copies of any document, or portion of a document, that discloses the hearing officer's opinion, judgment, analysis of the strengths and weaknesses of the proposed assessment, or information from or about third parties unrelated to the taxpayer.

When To Disclose:

The information provided in the Franchise Tax Board's internal procedure manuals does not reflect changes in law, regulations, notices, decisions, or administrative procedures that may have been adopted since the manual was last updated.

Audit File: Copies of audit files will not be provided until the staff in the Technical Resource Section has completed its review. For example, notices of proposed assessment are occasionally issued prior to the case being reviewed in order to protect the statute of limitations. In such situations, the audit file will not be disclosed to the taxpayer until Technical Resource Section completes its review.

Protest File: Copies of protest files will not be provided until the Notice of Action on Protest has been issued. The protest file for cases handled by FTB Legal Division may not be disclosed.

The above guidelines should be explained to taxpayers that request a copy of their audit file prior to the case passing review, or that question why items such as review notes were not provided. These taxpayers should be advised that although there is no statutory requirement to disclose audit files to corporate taxpayers prior to the discovery process in Superior Court litigation, long-standing department practice is to disclose non-proprietary information when the audit investigation is complete. This practice generally conforms to the provisions of the Information Practices Act (IPA), which mandates the disclosure of information to individual taxpayers. (California Civil Code sections 1798.30-1798.44) The department's position is that the audit investigation is not complete until the completion of the review process.

The cost of furnishing this data should be the actual cost incurred by the department. The Disclosure Office establishes these costs.

2040 OTHER STATE TAX AGENCIES REQUESTS FOR INFORMATION

Other States' requests for information can only be provided by designated Franchise Tax Board employees. Franchise Tax Board designees are authorized to receive, request and disclose confidential tax information with those states with which we have reciprocal tax exchange agreements. See the Disclosure Office Website for a listing of designated employees at *****.

NOTE: ((* *)) = Indicates confidential and/or proprietary information that has been deleted.

2050 THIRD PARTY CONTACTS

Guidelines for complying with R&TC section 19504.7 (Memo from Paul Usedom, March 31, 2000 - * * * * *)

Effective for all third party contacts made after April 7, 2000, the department is required to provide notice to all taxpayers prior to contacting third parties. This requirement is a part of the Taxpayer Bill of Rights Act of 1999 that conformed to federal law. Accordingly, the taxpayers should be notified beforehand and have the opportunity to provide alternative sources of information. The implementation of the workable procedures is still under consideration. The following will serve as interim guidance until the procedures are finalized.

What is a Third Party Contact?

The law defines a third party contact as contacts with "any person other than the taxpayer with respect to determination or collection of the tax liability of such taxpayer." The FTB follows IRS procedures and defines a third party contact as a contact:

- Initiated by an employee of the FTB
- Made with a person other than the taxpayer
- Made with respect to the determination or collection of a specific taxpayer's tax liability
- Identity of the taxpayer is disclosed or revealed to the third party

Taxpayer Notification

The FTB gives the taxpayer the opportunity to volunteer whatever information is sought. The FTB provides notification to the taxpayer before third parties are contacted. Each notification is effective for contacts made within 12 months of the date of that notification. The taxpayer can ask for a list of third party contacts no later than 60 days after the end of the 12-month period.

Generally, our audit activity is directly with a taxpayer or the taxpayer's representative. Some audit programs contact third parties on an as needed basis and often with the taxpayer's approval. Accordingly, it is Audit's policy to provide notice of third party contact only when the audit staff intends to contact third parties. We will not issue notifications if there is no intent to contact third parties.

Due to some pending issues regarding the impact of the Information Practices Act on this provision, the following language should be used when notification is necessary:

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"We may contact third parties to determine or collect your tax liabilities. Subject to privacy laws and your rights as a taxpayer, you may obtain a list of those contacts. For more information, please contact our Disclosure Office, P.O. Box 1468, Sacramento, CA 95812-1468."

Audit Record Keeping Responsibilities

Auditors must document the need for a third party contact and the notice issued to the taxpayer. Auditors must maintain the information in case it's requested to ensure that the taxpayer's rights are protected.

In summary, auditors must do the following:

- Give notice to the taxpayer prior to any third party contact.
- Provide a reasonable period of time to respond to our notice prior to the third party contact.
- Issue another notice if the third party is not contacted within 12 months. Each notice is in effect for 12 months.
- Document in the case file all third party contacts.
- Provide a record of contacts to the taxpayer upon the taxpayer's request. The taxpayer must make the request to the Disclosure Office within 60 days following the 12-month period.

These provisions of the Taxpayer Bill of Rights are effective for all contacts made after April 7, 2000.

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2060 CRITERIA FOR REFERRAL OF CASES TO THE TAXPAYER ADVOCATE BUREAU

Please refer any contacts (i.e., email, telephone, and written correspondence) from the following elected officials to the Taxpayer Advocate Bureau - Liaison Section:

- Federal or State Legislators or their staff
- Franchise Tax Board or Board of Equalization members or their staff
- Governor or his staff

Also refer any letters addressed to or containing "cc's" for any of the above or any of the following:

- Selvi Stanislaus
- Executive Officer
- Chief Executive Officer
- Director
- Taxpayer Advocate Bureau

If you have questions, please call the Taxpayer Advocate Bureau – Liaison Section at (916) 845-4360.

2065 MEDIA CONTACTS

The Public Affairs Office responds to all media inquiries. This includes calls or correspondence from representatives of newspapers, magazines or periodicals, television and radio stations. For any reason, if someone from the media contacts you, please refer them to the Public Affairs Office at (916) 845-4800. In addition, as soon as possible, notify your supervisor of the contact. Your supervisor can then determine, and resolve, whether your Program Manager should be aware of the contact.

2070 TAXPAYER BROWSING PROTECTION ACT (H.R. 1226)

The Taxpayer Browsing Protection Act makes unauthorized inspection (or browsing) of federal taxpayer information a felony. The penalty for unauthorized browsing is, "...a fine in an amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution." The pertinent provisions of the Act extend the prohibition to state employees with access to federal information. California conforms to the federal with its own code. (R&TC Section 19542.1.)

Note: State employees are subject to the federal law provisions regarding unwarranted disclosure or use of federal tax information or any willful unauthorized inspection of federal tax information that we receive from the Internal Revenue Service.

Previously, the R&TC did not provide that unauthorized inspection of tax return information was considered a misdemeanor, and taxpayer notification occurred only if it was determined that the taxpayer could be adversely impacted by the unauthorized disclosure. The Franchise Tax Board is now required to notify the effected taxpayer of any known incidents of willful unauthorized inspection or unwarranted disclosure, but only if criminal charges are filed for the offense. (California Civil Code 1798.29.)

"Inspection" is defined to mean any examination of confidential information. IRC sections 7431 and 6103 have comparable provisions except that these offenses can be punishable as a misdemeanor, or a felony charge.

All confidential taxpayer data, including RARs, form FTB 6227 requests, must be concealed at all times from everyone except those people working the case. These documents should not be face up in in-baskets or left on desks unless covered or turned over. If an employee is working on a case and another person comes into his or her workstation, that employee should cover or turn over all documents with names or other identifying taxpayer information. If the employee is away from his or her desk, taxpayer documents should be turned over, covered or put away in a drawer. At night, all confidential data should be secured in file cabinets, drawers, boxes, or shelving that conceals taxpayer identity. This includes all employees.

The law now says that to simply **view** taxpayer data where you have **no need to know** is unauthorized disclosure.

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2080 INTERNET MAIL

We have the ability to receive and send electronic mail over the Internet. This tool can be used to accommodate business-driven needs. However, **confidential information may only be sent to, or received from, a taxpayer or representative via Internet Secure Electronic Communications (SEC)**. To use SEC, go to the SEC web page (*****). The web page contains tutorials on how to use SEC and printable PDF procedures prior to using SEC. SEC allows one mailbox per FTB employee. An SEC mailbox cannot be set up for an FTB employee to an external mailbox.

Auditors may not use regular Internet email to send or receive confidential information because regular Internet email may be processed through private service providers and transmitted through unsecured lines.

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2090 Off-Site Security Considerations

Audit staff must exercise due diligence to protect the confidentiality of all information including the use of PC equipment and the PASS system. Common circumstances where this is an issue include:

- Leaving the PC on and unattended.
- Using the PASS system and equipment off-site during the course of audit examinations.
- Accessibility to the laptop, tax return and other case related information by family members or friends, while teleworking.
- Leaving the PC and/or audit records in an unsecured location, such as a vehicle.

To protect the security of all confidential information:

- Do not leave the PC unattended while connected to the system, or when using the PC to work off-line.
- Physically secure the PC so as to reduce the risk of theft.
- Physically secure any diskettes that contain confidential information.
- Apply the screen-saver password feature.
- Transport PC equipment and confidential information in a locked case (in the trunk of the vehicle).

For more information, see "Statement of Incompatible Activities and Rules of Conduct for Department Employees" (FTB Policy File 4130); "Confidentiality and Security of Data" (FTB Policy 9201); "FTB Computer Access Request Procedures" (FTB General Procedures Manual 7010); FTB Information Security Manual; FTB Disclosure Manual; or Contact the FTB Disclosure Office at (916) 845-3326 or visit the Disclosure Home page at *****

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